

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.1329 OF 1997

For approval and signature:

Hon'ble Mr.Justice S.K.Keshote

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

PATEL RMESHBHAI ISHWARBHAI
VERSUS
VIDYANAGAR SOCIETY

Appearance:

MR KB PUJARA for Petitioner
None present for Respnodent

Coram: MR.JUSTICE S.K. Keshote,J
Date of order:23/03/99

C.A.V. JUDGMENT

#. The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but none put appearance on behalf of the respondent.

#. Heard the learned counsel for the petitioner and perused the impugned order dated 17.6.97 of the Joint Civil Judge (S.D.), Visnagar, in Regular Civil Suit No.136 of 1996.

#. The plaintiff-respondent filed a civil suit against the defendant-petitioner for declaration and permanent injunction that the defendant-petitioner be restrained from making any construction on the disputed land which is the margin land of plaintiff-respondent. The defendant-petitioner filed an application purporting to be under Order-7, Rule-11 of the Civil Procedure Code, 1908, in the suit and prayer has been made therein that the suit may be dismissed as it is barred by provisions of the Gujarat Cooperative Societies Act and Land Revenue Code. It has next been prayed that the suit is not sufficiently stamped and therefore also it deserves to be dismissed. This prayer made by the petitioner was not accepted and the application filed in respect thereto came to be rejected under the impugned order by the learned trial court. Hence this civil revision application before this court.

#. In this civil revision application, twofold contentions have been raised by learned counsel for the petitioner. Firstly, it is contended that the plaintiff-respondent is not a registered cooperative society and as such, the suit filed in its name is not maintainable. In support of this contention, the learned counsel for the petitioner placed reliance on the provisions of Section 37 of the Gujarat Cooperative Societies Act, 1961, and decision of this Court in the case of Ramji Mandir Narsinhji & Ors. v. Narsinh Nagar Tekri Co.op. Housing Society Ltd. & Ors., reported in 1979 GLR 801. Second contention has been made that even if it is taken that the society is registered or as what the learned trial court said the question of non registration of society cannot be gone into at this stage, then too, the suit is not maintainable and reliance has been placed in support of this contention on the provisions of Section 96 and 166 of the Gujarat Cooperative Societies Act.

#. I have given my thoughtful considerations to the

submissions made by learned counsel for the petitioner.

#. In the application ex.15 dated 30.10.96, filed in Regular Civil Suit No.136/96, the title of the plaintiff has been given as under:

Patel Lakshmanbhai Vitthalbhai
Secretary, Vidhyanagar Society,
Resident of: Vidhyanagar Society,
Visnagar

Section 37 of the Gujarat Cooperative Societies Act, 1961 reads as under:

37. Societies to be bodies corporate --

A society on its registration shall be body corporate by the name under which it is registered, with perpetual succession and a common seal, and with power to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all such things as are necessary for purpose for which it is constituted.

#. So from this provision, it is clear that the cooperative society, unless it is registered, cannot sue in its own name. However, the learned counsel for the petitioner does not dispute that the suit is maintainable by members of the society where it is not a registered society. The learned trial court has given out that the suit filed in the present case is in representative capacity. Second reason given for rejection of application is that the question of registration will arise at the time of evidence, i.e. the plaintiff-society has to prove at that time whether it is registered or not. It is true that in case the society is not registered that point can be gone into at this stage. The consideration of such point cannot be deferred as what it has been given out by the learned trial court. It is a question of fact and more so a simple question incorporation of society as registered society. So this approach of the learned trial court is difficult to appreciate by this court but only on this court nothing turns on the merits of the matter also.

#. If we go by the title of the plaintiff in the suit, certainly it gives out as if the suit has been filed by the society through its Secretary but the Court cannot be oblivious of the fact that the Secretary is one of the

members of the society and he could have certainly filed a suit for other members of the society in representative capacity. Moreover, it is a mis-description at the most or it is a fit case where in case this objection is accepted an opportunity can be given to the plaintiff-responent to necessarily amend the cause-title. It is not a defect of the nature which cannot be cured. In fact, at the most, it is a defect of description of the party which is curable. The learned counsel for the petitioner contended that the plaintiff-responent has not come up with any prayer for making necessary correction in the cause title. It is true that it may not come up with such an application but the fact remains that there was no occasion for it also as the learned trial Court has decided the matter in its favour. In the peculiar facts of this case and the order impugned, the decision of this Court on which reliance has been placed by learned counsel for the petitioner is of little help to the petitioner. It is unfortunate for the plaintiff-responent that despite of engaging advocate in this case to defend it, the advocate is not remaining present. On the last date also, the advocate was not present and this matter has been adjourned, but indefinitely the matter cannot be postponed only on the ground that the advocate has chosen not to put appearance. This is how the matters are being delayed in the courts. Be that as it may, as stated earlier, it is a mere defect in description of the party and on which at the threshold the court should not have dismissed the suit under Order-7, Rule-11, C.P.C. though I have my own reservation whether in such matters, the provisions of Order-7, Rule-11, C.P.C. could have been put in service by defendant-petitioner. But this issue, I am not deciding as what I feel is that for the satisfaction of the defendant-petitioner only what it is required to be done by the plaintiff-responent is to cure this defect by amending the cause title of the suit accordingly. Their Lordships of Supreme Court in the case of Jai Jai Ram Manohar Lal v. National Building Material Supply, reported in AIR 1969 SC 1267 held that such defects in the title of the suit are curable defects and can be corrected at any stage of the proceedings. The learned counsel for the petitioner though made a second objection, but that it not the issue which can be decided at the stage where even the written statement has not been filed. Otherwise also, second contention raised is totally contradictory to what the first contention made by the learned counsel for the petitioner. So it is not the stage where this court has to go on this contention. In case the petitioner considers that it is not a registered society and the suit is not maintainable then

it is always open to it to raise this plea in the written statement and the learned trial court will decide the same in accordance with law.

#. However, so far as the first contention raised by the learned counsel for the petitioner is concerned, it is suffice to say that opportunity has to be given to the plaintiff-respondent to correct the cause title of the suit accordingly.

##. In the result, this civil revision application is dismissed. However, the plaintiff-respondent is directed to amend the suit accordingly by making it to be a suit by individual members of the society where the society is not in fat, a registered society. The learned trial court is directed to give notice to the plaintiff-respondent to amend the Plaint accordingly within a period of fifteen days from receipt of Writ of this Judgment. In case within fifteen days from the receipt of notice of the learned trial Court the amendment is not made in the Plaint then the suit pending before the learned trial court shall stand dismissed automatically without reference to the court. No order as to costs.

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[sunil]